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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CANANDAIGUA WINE COMPANY, INC.,

Plaintiff and Appellant,

v.

COUNTY OF MADERA,

Defendant and Respondent;

MADERA COUNTY ASSESSOR,

Real Party in Interest and Respondent.

F058029

(Super. Ct. Nos. MCV026118.  
MCV024360 and MCV028229)

**OPINION**

APPEAL from a judgment of the Superior Court of Madera County. James E. Oakley, Judge.

Winston & Strawn, Charles J. Moll III, Amanda L. Groves and Troy M. Van Dongen for Plaintiff and Appellant.

Cota Cole & Associates, Dennis M. Cota and Carolyn J. Frank for Defendant and Respondent and Real Party in Interest and Respondent.

Appellant, Canandaigua Wine Company, purchased a wine business that included the Mission Bell Winery (Winery) located in Madera County. When the Madera County Assessor (Assessor) failed to reassess the Winery as of the purchase date, appellant filed an application for changed assessment with the Madera County Assessment Appeals Board (AAB). Appellant filed applications for changed assessments for another five tax years as well.

At a hearing held before the AAB, appellant argued that the Assessor should have enrolled the purchase price as the base year value. In response, the Assessor defended its decision to enroll the Winery based on its own appraisal. However, the AAB chose a third option to value the Winery. Rather than relying on either appellant's claimed purchase price or the Assessor's appraisal, the AAB valued the Winery based on the preliminary change of ownership report filed by appellant.

Appellant then filed the underlying petition for writ of mandate against the AAB and named the Assessor as a real party in interest. Following cross-motions for summary judgment, the trial court ruled that the AAB relied on an erroneous valuation method and remanded the matter to the AAB for reconsideration of the Winery's full cash value. The court further found that the AAB did not fail to timely hear evidence on the tax years following the purchase and thus, appellant was not entitled to have its opinion of market value enrolled under Revenue and Taxation Code<sup>1</sup> section 1604, subdivision (c).

Appellant contends the trial court erred in not directing the AAB to use the purchase price to determine the appropriate values of the property at issue and in failing to apply the remedy set forth in section 1604, subdivision (c). As discussed below, the

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

trial court correctly remanded the matter to the AAB for reconsideration of the Winery's full cash value. Accordingly, the judgment will be affirmed.

### **BACKGROUND**

In 1994, appellant purchased the Almaden and Inglenook wine businesses from Heublein, Inc. for \$127,733,795. As part of this sale, appellant acquired the Winery. This sale also included interests in real property located in other counties, tangible personal property, inventory, and intangible assets such as brand names, good will, and going concern value. Appellant promptly recorded a preliminary change of ownership report for the Winery stating a total purchase price of \$72,896,000 for the real property alone.

Although required to appraise this property at its full cash value as of the date the change in ownership occurred (§ 75.10), the Assessor did not issue a supplemental assessment or otherwise establish a new base year value reflecting this change. Consequently, appellant filed an application for changed assessment for the 1995 tax year with the AAB. Thereafter, appellant filed applications for changed assessment for the 1996, 1999, 2000, 2001, and 2002 tax years.

Following a series of extensions, the AAB conducted a hearing on appellant's applications in December 2003. Despite the number of tax years in question, the AAB limited the time for each side to provide evidence and testimony to three hours. Appellant's counsel advised the AAB that he would have sufficient time to present evidence and argument on the 1994 base year value but that it was unlikely that appellant would be able to introduce much, if any, evidence for the later years at issue. Nevertheless, the AAB chairman repeatedly informed appellant's counsel that the hearing covered all six applications and encouraged appellant's counsel to proceed more quickly.

Appellant's evidence was limited to the 1994 base year value. Appellant's witnesses explained the circumstances surrounding the acquisition of the wine business

and how approximately \$40 million of the \$127,733,795 total purchase price was allocated to the Winery. Appellant's expert appraiser introduced his 1995 appraisal of the Winery and opined that the price paid by appellant was reasonable.

The Assessor's evidence pertained to the Winery's enrolled value for March 1, 1995. Testimony from a county auditor and two volumes of documents were presented in support of this value.

Within the deadline stipulated to by the parties, the AAB issued its decision. However, rather than adopt either party's value for the Winery, the AAB based its value determination on the preliminary change of ownership report. Thus, the AAB set a base year value of \$72,896,000 for the real property. The AAB then added \$2,064,000 for the assessable personal property for a total base year value of \$74,960,000. The AAB also determined that the value of the Winery for the years 1995, 1996, and 1999 through 2002 would remain as listed on the existing rolls.

Appellant filed the underlying petition for writ of administrative mandamus or mandate in the trial court setting forth three causes of action. The first cause of action challenges the AAB's decision on the ground that appellant's appeals relating to tax years 1995, 1996, 1999, 2000, 2001, and 2002 were not timely heard. The second cause of action alleges that for each of the tax years after 1995, the AAB failed to enroll the property's trended base year value as required by section 51. In the third cause of action, appellant challenges the AAB's new base year value for the Winery.

Appellant also filed two complaints for refund of property taxes, one covering tax years 1994 through 1996 and a second one covering tax years 1999 through 2002. Respondent, the County of Madera (County), was the only named defendant. Appellant's three pending actions were consolidated for trial.

The parties filed cross-motions for summary adjudication of the third cause of action of the writ petition, i.e., the challenge to the AAB's base year value for the 1995

tax year. The trial court granted appellant's motion in part holding that the AAB erred when it adopted the preliminary change of ownership report as the Winery's purchase price. However, the court declined appellant's request to determine, as a matter of law, both the transaction purchase price and the fair market value for the Winery based on a pro rata allocation of that purchase price. Rather, the court remanded the matter to the AAB with directions to recalculate the value of the subject property.

Appellant filed an appeal from this writ order arguing that, while the trial court correctly reversed the AAB's decision, the court erred when it remanded the case to the AAB rather than determining the base year value as a matter of law. (Appeal No. F055858). We dismissed this appeal as premature. (*Canandaigua Wine Co. v. County of Madera* (2009) 177 Cal.App.4th 298.)

The trial court next ruled on appellant's first cause of action and granted the Assessor's motion for summary adjudication. The court concluded that appellant was not entitled to have its opinion of market value enrolled for the tax years at issue under section 1604, subdivision (c), because the AAB did not fail to hear evidence on appellant's applications for reassessment. Rather, while the three-hour time limit for presentation of evidence at the hearing may have been unreasonable, appellant was given the opportunity to present evidence for all tax years in dispute. The second cause of action was dismissed as moot.

Appellant filed the instant appeal from this ruling. Since both parties completed briefing the issues in the previously dismissed appeal, we granted appellant's request to incorporate the briefs and the appendices filed in appeal No. F055858 into this appeal by reference.

## DISCUSSION

### **1. *The trial court properly remanded this matter to the AAB.***

California Constitution, article XIII, section 1, provides that all property “shall be assessed at the same percentage of fair market value.” “Fair market value” or “full cash value” is “the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.” (Cal. Const., art. XIII, § 2, subd. (a).) Once established, the “full cash value” becomes the base year value for purposes of ad valorem property taxation. (*Maples v. Kern County Assessment Appeals Bd.* (2002) 103 Cal.App.4th 172, 180.)

Section 110, subdivision (a), defines “full cash value” or “fair market value” as “the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes.” The “full cash value” of property is “the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the ‘full cash value’ or ‘fair market value’ if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other.” (§ 110, subd. (b).)

Thus, the purchase price plays a significant role in the reassessment of property upon its sale. Nevertheless, the purchase price is only the beginning and not necessarily the end of the inquiry. (*Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019, 1027.) Even an arm’s length, open market transaction may involve factors that skew the

purchase price and make it an unreliable indicator of the fair market value. For example, the transaction may be complex, comprising several components in one package or the purchase price may be influenced by tax consequences and other business considerations that affect the value ascribed to the property by the particular buyer and seller. (*Id.* at p. 1028.)

The California Constitution directly confers the power of equalization on the county board of supervisors or the assessment appeals board created by the county. (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 22.) The assessment appeals board has the duty to “equalize the values of all property on the local assessment roll by adjusting individual assessments.” (Cal. Const., art. XIII, § 16.) In so doing, the assessment appeals board exercises quasi-judicial powers that are delegated to it by the Constitution. (*Shell Western E & P, Inc. v. County of Lake* (1990) 224 Cal.App.3d 974, 979.) Accordingly, the assessment appeals board, rather than the courts, is the proper tribunal for exercising judgment on valuation questions concerning individual assessments on the local roll. (*Plaza Hollister Ltd. Partnership v. County of San Benito, supra*, 72 Cal.App.4th at p. 23.)

As discussed above, the trial court reversed the AAB’s base year value determination. The court found that, in relying on the value listed in the preliminary change of ownership report alone to determine fair market value without any factual or legal justification, the AAB failed to use a proper valuation method. The court further concluded that the AAB had failed to fulfill its obligation to make factual determinations as to value based on substantial evidence. Accordingly, the court refused to take the fact-finding role away from the AAB and determine the fair market value of the Winery as requested by appellant. Instead, the court remanded the matter to the AAB.

Appellant agrees that the trial court properly reversed the AAB’s base year value finding. However, appellant disagrees with the remand to the AAB. According to

appellant, because (1) the trial court reversed the AAB's finding that the Assessor had overcome the section 110, subdivision (b), purchase price presumption, and (2) no evidence was presented to establish that the property would not have transferred for the purchase price in an open market transaction, the trial court was required to find that the purchase price established the full cash value as a matter of law. In other words, there are no facts in dispute for the AAB to decide.

The key question concerning remand is whether there remain factual determinations to be made in establishing fair market value. (*Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142, 1161.) "If the board has used an improper method of value or has failed to use proper criteria in valuing the property and there is no evidence or there is a conflict in the evidence from which a proper value can or should be made, the trial court must remand the matter to the board for further proceedings." (*Norby Lumber Co. v. County of Madera* (1988) 202 Cal.App.3d 1352, 1366.) Where judgment must still be exercised as to value, a remand to the local board of equalization is required. (*Plaza Hollister Ltd. Partnership v. County of San Benito*, *supra*, 72 Cal.App.4th at p. 24.)

Here, the trial court concluded that the AAB failed to either use a proper valuation method or make factual determinations supported by substantial evidence. Although section 110, subdivision (b), creates a presumption that the purchase price is the fair market value of the property, that presumption is rebuttable. In other words, the purchase price is not conclusive evidence of value. Accordingly, remand is required if relevant evidentiary conflicts exist.

Contrary to appellant's position, there is conflicting evidence on the Winery's fair market value. At the hearing, appellant focused on the circumstances surrounding the 1994 sale and the values allocated to the various assets by the parties. The Assessor did not specifically respond to appellant's evidence but, rather, presented a March 1, 1995,



appraisal of the Winery. The Assessor stipulated that the acquisition was an arm's length transaction but otherwise the valuation evidence was in dispute.

Since appellant purchased a substantial business enterprise, of which the Winery was only one of many components, the buyer and seller allocated the price among the various assets. Due to the complexity of the transaction, including the possible influence of business and tax considerations unrelated to actual value, factual findings regarding the fair market value of the Winery were required. However, as noted by the trial court, the AAB completely abandoned its role as fact finder. Under these circumstances, the trial court would have impermissibly shifted the ultimate equalization responsibility from the AAB to itself if it had determined the Winery's assessable value as a matter of law. Accordingly, the trial court properly remanded the matter for further proceedings.

Documentary evidence submitted at the AAB hearing indicated that contracts entered into by Heublein for the future supplies of grapes were part of the bargain and that appellant created loss reserves associated with those contracts. In the trial court proceeding, the Assessor argued that appellant's assumption of these contracts amounted to additional compensation to Heublein and thus had an impact on the purchase price. However, because the Assessor did not make this argument during the abbreviated AAB hearing, appellant requested the trial court to rule that the Assessor had waived this issue. The trial court declined to make such a ruling finding that the impact of the Heublein grape contracts was a mixed question of law and fact and therefore it was for "the AAB to determine, in the first instance and as supported by the record now in front of it, what impact, if any, the grape contracts or reserves, which were part of the deal, should have on the fair market values of any portion of the subject property."

On appeal, appellant again argues that the Assessor waived this issue. However, despite the Assessor having had the opportunity to make this argument at the first AAB hearing, he is not precluded from raising this point at a subsequent hearing. A hearing

before the AAB is not a typical administrative proceeding. Rather, an alleged waiver in this situation must yield to the overriding policy concern that “all property should be properly assessed and bear its fair share of property taxes.” (*Mitchell v. County of Los Angeles* (1997) 60 Cal.App.4th 497, 506.)

Appellant further contends that, in any event, the concept is legally invalid. However, as found by the trial court, the impact, if any, of the grape supply contracts on the fair market value of the Winery is a question of fact. Accordingly, it is for the AAB to make this determination on remand.

**2. Section 1604, subdivision (c), does not apply.**

Section 1604, subdivision (c), requires the county assessment appeals board “to hear evidence” and “to make a final determination” on an application for reduction in assessment within two years. If the appeals board fails to do so, the taxpayer’s opinion of value becomes the assessed value for the year or years covered by the application. The purpose of this section is to assure prompt resolution of applications for assessment reductions by providing a significant disincentive for a taxing authority to delay resolution of the case. (*United Enterprises, Ltd. v. Assessment Appeals Bd.* (1994) 22 Cal.App.4th 152, 159.)

As noted above, the AAB hearing was held in December 2003 and covered all six of appellant’s applications. The parties had mutually agreed to a series of time extensions and had waived time to June 30, 2004, for the AAB to hear evidence and make a final determination on the applications.

At the beginning of the hearing, the AAB chairman announced that all six of the assessment appeals would be heard that day. The parties had been previously informed that, under its own rule, the AAB was limiting the testimony for each side to three hours. The AAB chairman suggested that the parties start with the base year value and then proceed sequentially. When the chairman asked the parties “Do you estimate we can

compress all of that information we're going to have to deal with into the time frame that we have allotted? That's just -- we've got today allotted to this matter for both sides to present their information," appellant's counsel responded that appellant's base year value evidence would be presented but that it would not be possible to get into the subsequent years due to the time constraints. The AAB did not respond to appellant's remark.

Appellant then began presenting its evidence on the 1994 base year value. During appellant's case, the AAB chairman repeatedly urged appellant to proceed more quickly in order to complete its presentation in the allotted time for all six of the assessment appeals. For example, near the beginning of the hearing, the chairman asked appellant "Is there any shorter way of getting there? Because I'm looking at the time allotment that we've got, and I hate to have you run out of time before you've gotten into your main argument." Following the morning recess, the chairman stated "And I would just remind all the parties that we are running on a clock and that we are going to try to conclude this hearing today. So I would ask you to try to move things along ...." Thereafter, the chairman again reminded appellant "But please understand we do have time constraints. I'm just trying to urge you to get your case before us ... because I don't want to cut you off ... at some point and say, 'well, you've had your three hours ....'" Nevertheless, by the end of the day, appellant had only addressed the 1994 base year value.

During his summation, appellant's counsel emphasized that he had only presented a case on the base year value and had not presented evidence, other than exhibits, on the March 1, 1995, and subsequent year's values. Counsel then requested that

"we have that opportunity if -- and again, it's depending upon the base-year value determin[ation]. If that doesn't resolve -- if the base-year value determination itself doesn't resolve [these] other [] issues[,] then, of course, we do request a future opportunity to hear the rest of those, the '95, '96 and '99, 2000, 2001, 2002 years, which are -- those applications are before the board."

No further hearings on appellant's applications were held. Rather, on June 3, 2004, the AAB issued its decision. The AAB found that the Assessor had failed to enroll a base year value for the Winery and ordered that value to be set at \$74,960,000. This figure was based primarily on the \$72,896,000 real property purchase price stated on the preliminary change of ownership report. As to the remaining tax years at issue, the AAB noted that, despite being on the agenda, appellant's counsel chose not to address those appeals and thus, had not presented sufficient evidence to rebut the presumption that the Assessor's values were correct. Accordingly, the AAB ordered the existing values to remain on the rolls.

Appellant contends the trial court erred when it refused to apply the section 1604, subdivision (c), remedy and order that appellant's opinion of value be enrolled as the assessed value for the years in question. According to appellant, the AAB failed "to hear evidence" on all of the tax years raised by the assessment appeals.

Contrary to appellant's position, the AAB did not "fail to hear evidence" on all of the appeals. Rather, appellant failed to present such evidence. The hearing was timely held and appellant had the opportunity to address all tax years in question. In fact, the AAB chairman repeatedly urged appellant to streamline its case in order to do so.

Granted, it was unreasonable for the AAB to demand that the hearing be completed in one day. The complexity of the transaction and the number of tax years involved required more than six hours for a full and fair hearing. Nevertheless, this type of error on the AAB's part does not trigger the section 1604, subdivision (c), remedy. The purpose of section 1604 is to prevent appeals from being tied up for extended periods *without* a hearing, not to assure that a timely hearing results in a valid equalization determination. (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1344.) Rather, the remedy for a due process violation, such as the AAB's unreasonable limit on the time allotted for the hearing, is remand to the AAB for

a full and fair hearing. (*Universal Cons. Oil Co. v. Byram* (1944) 25 Cal.2d 353, 361-362; *Main & Von Karman Associates v. County of Orange* (1994) 23 Cal.App.4th 337, 344.)

### **DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to respondents.

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Levy, Acting P.J.

WE CONCUR:

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Dawson, J.

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Hill, J.